

UNITED STATES BANKRUPTCY DISTRICT COURT
EASTERN DISTRICT OF NEW YORK AT BROOKLYN

CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF
NEW YORK

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-----X
Eric Hawkes Richmond

Bankruptcy Court Case No. 14-41678 (CEC)

CHAPTER 13

Debtor.
-----X

**MOTION TO RECUSE JUDGE UNDER 28 U.S. Code § 455 - Disqualification of
justice, judge, or magistrate judge,**

**MOTION TO RECUSE JUDGE UNDER 28 U.S.C. § 144 - U.S. Code - Unannotated
Title 28. Judiciary and Judicial Procedure § 144. Bias or prejudice of judge,**

28 U.S. Code § 455 - Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

**28 U.S.C. § 144 - U.S. Code - Unannotated Title 28. Judiciary and Judicial
Procedure § 144. Bias or prejudice of judge**

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

Federal Rules of Evidence : Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

- (1) may take judicial notice on its own; or
- (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

18 U.S. Code § 4 - Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

18 U.S. Code § 2071 - Concealment, removal, or mutilation generally

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates,

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

28 U.S. Code § 1746 - Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

- (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".
- (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

OVERVIEW

1. The actions of the Chief Justice of the Eastern District of New York Bankruptcy Court have risen to the level of clear bias against the Debtor as well as warring on the Constitution, Supreme Court Precedents, Second Circuit rulings, Federal Rules of Evidence, local rules and due process (Notice and Opportunity to be heard) while also providing unequal protection under the law.

falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

18 U.S. Code § 1001 - Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to—

- (1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

2. The cherries on top are the orchestration of the arrest of the Debtor on May 10, 2017 for attempting to make a record detailing multiple crimes under 18 USC 1001, 18 USC 2071 and 18 USC 4 by, at a minimum, the clerk of the court of the Second Circuit and, at most by the clerk, several justices of the of the Second Circuit and the Chief Bankruptcy Judge of the Eastern District of New York.

3. In wide ranging issues that impact the debtor the court has, among other things, failed to vacate an illegal post-petition decision by a state court judge impacting the debtor's assets, failed to provide required hearings pursuant to Federal Rule of Evidence 201, failed to acknowledge hearings, improperly made findings that debtor appeared when debtor had not appeared, ignored jurisdictional arguments when raised, denied jurisdictional arguments before hearing them, attempted to compel debtor to file papers with jurisdictional arguments as opposed to immediately ruling on the clear lack of the words "under penalty of perjury" in a certification by counsel for a creditor and provided incomplete audio recordings of the hearing where debtor was arrested and the hearing where debtor challenged the court's right to rule where the movant had not met the threshold to compel appearance nor the threshold to invoke the court's jurisdiction

4. The court also repeatedly cut of Debtor in the midst of making a record detailing crimes by court officers and court employees and while attempting to show the court that the lack of the words "under penalty of perjury" on the proof of service mandated the immediate dismissal of the Creditor Motion.

5. In addition, the court failed to disclose a familial affiliation with a partner at a law firm accused of perjury and fraud.

6. In addition, the court failed to disclose a familial affiliation with a partner in a law firm who has provide high profile and expensive legal services to an entity who owns an entity with an interest in the outcome of the dispute before the court.

7. In addition, the court has made a finding in direct contrast to the testimony of the attorney for the creditor and failed to correct that finding upon a motion for reconsideration.

8. In addition, the court cited a repealed statute and failed to correct it upon a motion for reconsideration.

9. In addition, when informed of the commission of a felony cognizable by a court of the United States (as required by 18 USC 4), the court has, seemingly, both failed to report the crime to authorities and has also failed to acknowledge or address the hearing at which the Debtor was arrested at the court's behest for demanding Debtor's right to make a record ("I think I am going to get out until the Marshal's come.")

BIAS INDICATOR #1

10. The court cited a repealed Maine Statute and failed to correct that error upon motion for reconsideration.

BIAS INDICATOR #2

11. The court found that a document seems to be and appears to be an original when the Attorney for the creditor admitted on the record that it was a copy and the court failed to correct that error on motion for reconsideration.

BIAS INDICATOR #3

12. The court failed to disclose its familial affiliation to William D. Freedman, a senior counsel for Troutman Sanders, an entity whose alleged perjury led to stripping the debtor of equity to either avoid or pay of bankruptcy.

BIAS INDICATOR #4

13. The court failed to disclose a familial affiliation (husband Stuart Freedman of Schulte Rothe), an attorney for a company with a financial stake (The Related Companies: Equinox : Blink) in the outcome of issues before the court.

BIAS INDICATOR #5

14. The court repeatedly cut off and prevented Debtor from making a record on May 10, 2017 wherein Debtor attempted to detail knowledge of the actual commission of a felony cognizable by a court of the United States.

BIAS INDICATOR #6

15. The court repeatedly cut off and prevented Debtor from making a record on July 18, 2017 by arguing that the court lacked jurisdiction to hear the motion based on the lack of the words "under penalty of perjury" in the certificate of service in violation of *28 U.S. Code § 1746 - Unsworn declarations under penalty of perjury*.

BIAS INDICATOR #7

16. The court has failed to report the crimes under 18 USC 4, 18 USC 2071 and 18 USC 1001 that were reported to the court.

BIAS INDICATOR #8

17. The court has failed to acknowledge or address the hearing on May 10, 2017 wherein the court orchestrated the arrest of Debtor ("I think I am going to get out until the Marshal's come.") producing a *coram non judice*.

BIAS INDICATOR #9

18. In an attempt to avoid 28 U.S. Code § 1746 - *Unsworn declarations under penalty of perjury*, the court has sought to compel participation in a motion which should have been denied without prejudice to refile on July 18, 2017.

BIAS INDICATOR #10

19. The court both ignored a jurisdictional argument at the beginning of the July 18, 2017 hearing and it then denied the jurisdictional argument without actually allowing Debtor to present the argument.

BIAS INDICATOR #11

20. The court has failed to acknowledge in any paper, way, shape, form or manner the allegations made in the unacknowledged hearing on May 10, 2017.

BIAS INDICATOR #12

21. The court has failed to hold several required hearings pursuant to Federal Rule of Evidence 201.

BIAS INDICATOR #13

22. The court failed to address the implications of having a new \$15,000,000 asset sworn to under penalty of perjury on the bankruptcy.

23. BIAS INDICATOR #14

24. The court made a finding that the debtor appeared on July 18, 2017 implying Debtor's assent to the jurisdiction of the court in the matter.

25. The first words out of the Debtor's mouth are in direct contrast to that finding :

"I am appearing solely to contest the court's Jurisdiction in this matter. I do not assent to any jurisdiction of this court in this matter."

BIAS INDICATOR #15

26. The court has failed in its entirety to ever state what was frivolous when making a finding of frivolous against the debtor in direct violation *Denton V. Hernandez*: as summarized by Sandra Day O'Connor:

An in forma pauperis complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be "strange, but true; for truth is always strange, Stranger than fiction." Lord Byron, Don Juan, canto XIV, stanza 101 (T. Steffan, E. Steffan, & w. Pratt eds. 1977).

FROM THE MAY 10, 2017 HEARING

DEBTOR:

I am now, according to this I am alleging to this court that I am the owner of 227 4th Avenue according to the deed that has just been presented to you. According to that I now have a net worth of \$15,000,000. I will be able to make payments on my house in Maine.

COURT:

How are you the owner of this.

DEBTOR:

There is a deed from the llc to me.

COURT:

How is it that you are able to transfer this property ...?

DEBTOR:

I am able to transfer the property because the deed which the referee served was facially flawed.

COURT:

That's not something I am prepared to consider at this point.

DEBTOR:

I am swearing under penalty of perjury that that exists as a deed. I will have the ability to make those payments.

COURT:

That's not something I am prepared to take into consideration here.

=====

If the referee's deed doesn't go through that doesn't re-vest title in you once the foreclosure sale has happened.

..

This is meaningless.

...

DEBTOR:

There appears to be crimes occurring in the Second Circuit with regards to my cases.

COURT:

How is that in any way relevant to whether you are going to be able to pay your creditors?

DEBTOR:

If the decisions that this court have made that were supported by Judge Brian Cogan are reversed due to a writ of prohibition file on Judge Cogan then none of this is happening.

COURT:

There is nothing currently pending in District Court as far as I can tell by looking at the docket. Nothing pending in the Second Circuit.

DEBTOR:

Well, yeah, actually your honor, what I want to tell you about is the fact that I have proof of the Second Circuit altering my docket in a writ of prohibition twice.

...

COURT:

I am not getting involved in that.

...

DEBTOR:

18 USC 2071 Concealment was occurred by the by the Circuit Court by false statements 18 USC 1001 and under 18 and under 18-USC-4 I am reporting felonies to this court. Upon reporting felonies to this court you are bound by law

to report them to the authorities. Otherwise 18-USC-4 misprision of a felony comes into effect.

...

COURT:

Your deed is insufficient.

...

My understanding of foreclosure law is once the foreclosure sale occurs you no longer have standing to challenge what happens after that.

....

DEBTOR:

I have raised the crimes alleged to you, a federal officer. It is your job to report them up the chain. To not do so is misprision of a felony.

...

Your honor there are two other issues in front of the circuit court.....

I filed a motion to stay the mandate in two separate cases in the Circuit involving decisions by this court and those docket items have never shown up on the docket. I have proof of filing in the Second Circuit and they have not shown up on the docket after 150 days.

This court system is not following any of its rules.

....

COURT:

I suggest you take it up with the circuit court.

....

DEBTOR:

I am taking it up with you because you are a federal officer.

I am here before you now. I have asked for hearings based on judicial notice based on Federal Rule of Evidence 201 several times to this court and as yet, on four five or six times

this court has not granted a single solitary hearing on judicial evidence on things that would change everything in this case.

...

Federal Rule of Evidence 201 says you must give me a hearing if I request it.

...

COURT:

No, thats not correct.

...

DEBTOR:

Yes it is. It is not discretionary.

...

COURT:

Your are only entitled to a hearing if there is a relevant issue here that would **affect this.**

...

DEBTOR:

Your decisions never touch the issues that were raised in the motion.

Your decisions say I refuse, I am denying your motion for judicial notice of facts.

OF FACTS

That is impossible for you to state without stating what facts you are disagreeing with.

...

COURT:

Your remedy is to go to the appellate court.

...

DEBTOR:

You mean the appellate court that can't be bothered to address any of the issues.

How about the one where you declared me to be frivolous yet not follow Sandra day Oconnor's rulings on the fact that you have to state exactly what is frivolous in order to find me to be frivolous. You have not done that yet.

There are ten motions in front of you and 8 appeals.

All of them you said, oh, appeal would be frivolous so screw you Mr. Richmond when all you have to do is go Mr. Richmond you said that your due process was violated. Here's how you said it was. I am going to tell you how you how thats impossible and ridiculous.

...

COURT:

It is not up it you to dictate how I draft my orders.

...

DEBTOR:

Its up to the Supreme Court to dictate it. And they dictated. SDO dictated it.

You're ignoring Supreme Court Precedent. You're ignoring Circuit Court Precedent. You're ignoring District Court Precedent.

....

COURT:

If you are unhappy with the way I've handled the issues.

....

DEBTOR:

Your honor, Unhappy doesn't matter if the higher court won't address the issues. That if you are saying that you don't care if the higher court address the issues then you are part of the problem.

.....

COURT:

What the higher court does is not up to me.

I believe I have a copy of the docket in the Second Circuit. I don't believe there is anything pending there now.

...

DEBTOR:

Your honor, if I show you that there is a docket item that was filed it is by definition pending.

Your honor, papers filed on December 1st and a mandate issued on December 17th.

But that docket item that would have stayed that mandate until a decision was made on the motion has never shown up after 160 days.

...

COURT:

I believe there was an order issued denying your motion to stay the mandate.

...

DEBTOR:

I had three appeals in the Second Circuit or three sets of appeals. One of them I filed and somehow it made it through, the other two I can show you the proofs of service that says on December 1st I filed a motion for reconsideration and Reconsideration En Banc and two issues that would affect this case directly and strongly.

...

COURT:

And they were denied.

...

DEBTOR:

No, they were not denied. There are not even filed with the circuit court. I got proof I file a motion with the Circuit Court. They were never docketed.

...

Your honor. They have never shown that they own the Mortgage. You made a finding that it seems and that it appears that it is a deed. A note ... You made a ridiculous finding.

...

COURT:

Mr. Richmond I am cutting you off.

...

DEBTOR:

What are you cutting me off for. I am making my record. My record is...

...

I am going to continue to talk and make my record.

...

COURT:

Do not speak again or you are out of order.

...

DEBTOR:

Make me out of order for wanting to declare my rights...

...

I said that the second circuit has failed to docket items in cases directly impacting this court. And you cannot issue any decision in this court because the entire court lost jurisdiction when the court higher court failed to docket the items. When an item says, hey you guys screwed up, heres my motion to reconsider by the panel and en banc and that motion never shows up in court nobody has a right to make a ruling.

...

COURT:

This is not relevant to the matter before me.

...

DEBTOR:

Yes it is because it is appeals of your decision.

...

Your honor you have to address the second circuit failure to docket items.

...

COURT:

That is the end of this hearing.

...

DEBTOR:

I am still here talking.

...

COURT SECURITY: (you got to step out (court security))

....

COURT:

On Mic: I think I am going to get out until the Marshal's come.

FROM THE JULY 18, 217 HEARING

DEBTOR:

I am appearing solely to contest the court's Jurisdiction in this matter.

I do not assent to any jurisdiction of this court in this matter.

COURT:

Alright, then i'm granting the motion...

DEBTOR:

I get to say why

COURT:

If your objection is to jurisdiction I'm overruling it.

DEBTOR:

You can't overrule it without hearing it.

COURT:

Well you would have to file something for me to see it.

DEBTOR:

No, I don't have to file something when you don't have jurisdiction.

I can read it right now and make a record in the court.

There is no proof of service on the notice of motion and motion filed with this court.

As such adequate notice is not possible as it must be served with some notice in advance.

The certification of Jordan S. Katz is absent the required "I declare, certify or verify or state under penalty of perjury the foregoing is true and correct."

He has not file a statement to which under penalty of perjury. Therefore that document should be struck and no notice has been given. You can not give any weight to something from an attorney that requires swearing under penalty of perjury that does not swear under penalty of perjury.

...

The movant has not met the initial burden to comply appearance or response. Neither have the papers file with this court.

... The only way you can count anything by this court is if Jordan S. Katz, the person who filed the documents, swears under penalty of perjury that has served any document I don't care what address it was at. If he has not done so then he has to testify to that fact.

COURT:

Oh, its the service that's not under penalty of perjury?

DEBTOR:

Yes. All he has to do is serve it again and file it. This is not a difficult issue.

COURT:

A certification of service is adequate.

DEBTOR:

Not it is not. It has to be under of penalty of perjury. Service doesn't matter if it is not under penalty of perjury. Its the whole definition of it. Just have them serve it and file a document and schedule another date.

COURT:

So, what I can do is give you. I can adjourn this and give you week to submit opposition.

And I will take the matter as fully submitted at that point.

DEBTOR:

No your honor I need to be heard.

COURT:

Once the papers are filed then the matter is fully submitted.

DEBTOR:

It is not fully submitted, I get Oral argument you honor.

COURT:

Not necessarily.

DEBTOR:

Why not necessarily?

COURT:

Because oral argument is for my benefit Mr. Richmond if I feel that I need additional If I feel additional

DEBTOR:

Oral argument is a right

COURT:

No it is not. This is what I am doing.

We will adjourn the hearing to ... August 22nd ...If I consider the record to be sufficient I will, I may rule on it at that time.

DEBTOR:

Your honor I request Oral argument...

COURT:

If I feel that I need oral argument then I will, I will then I will have it.

DEBTOR:

I would like judicial notice that you are denying me oral argument.

Judicial notice that you are denying me oral argument.

Judi ... Cut off

(Missing something to the effect if you are not quiet I can/will have you removed from the court.)

MOVANT RESERVES RIGHTS

Movant reserves the right to amend and augment this motion/pleading

CONCLUSION:

The court has shown a callous disregard for due process, the law and binding precedent. The court has also failed to disclose familial relationships relating to financial ties to those who have a stake in the issues before the court.

The standard of "impartiality might reasonably be questioned" of 28 USC 455 has been met.

The standard of a personal bias against debtor under 28 USC 144 has been met given the abject failure to hold Federal Rule of Evidence 201 Hearings, the failure to vacate a post petition state court decision that impacted debtor's assets, the denial of jurisdictional arguments before they are heard and the repeated failure to allow the debtor to make a complete record at hearings.

WHEREFORE: Movant demands that Judge Carla Craig recuse herself from this case under the authority of 28 USC 144 and 28 USC 455 as the multitude of issues resulting from the conduct of the court clearly surpasses any bar for the appearance of bias and impartiality and stretches into potentially criminal acts (failure to note the reporting of crimes on the docket and the failure to report those crimes to law enforcement) as well as the loss of jurisdiction for failing to allow debtor to make a record on multiple occasions and the failure to hold required evidentiary hearings.

Affirmed to this date: August 4, 12017 -
Brooklyn, NY


Eric Hawkes Richmond, sui juris
2107 Regent Place
Brooklyn, NY 11226
(646) 256-9613
gowanusx@gmail.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----- X
In Re: Chapter 13

Case No. 14-41678 (CEC)

Eric H. Richmond

Debtor
----- X

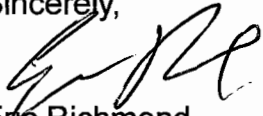
AFFIRMATION IN SUPPORT OF MOTION TO RECUSE

DEBTOR believes that it is clear that Bankruptcy Court impartiality might reasonably be questioned and that the court has shown a clear bias against Debtor.

As such DEBTOR requests that the court grant the motion for recusal and any other relief that the court deems just and proper.

DATE: August 4, 2017

Sincerely,


Eric Richmond
Debtor, pro se

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on August 4, 2017, I served the foregoing **MOTION TO RECUSE** dated August 4, 2017 via the regular United States mail on the following:

Glenn P. Warmuth, Esq. Stim & Warmuth, P.C.
2 Eighth Street Farmingdale, NY 11738

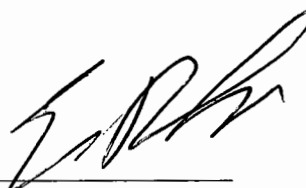
Michael Macco - Trustee
2950 Expy Dr S #109
Islandia, NY 11749

ROSEN, KANTROW & DILLON, PLLC
38 New Street
Huntington, New York 11743

Jordan S Katz, Esq.
40 Marcus Drive, Suite 200
Melville, New York 11747
(631) 454-8059

Dated August 4, 2017

By:



ERIC RICHMOND
DEBTOR, PRO SE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----- X
In Re: Chapter 13

Case No. 14-41678 (CEC)

Eric H. Richmond

Debtor
----- X

PLEASE TAKE NOTICE that upon the annexed **MOTION TO RECUSE DATED** dated August 4, 2017 and **PROOF OF SERVICE** filed herewith, the undersigned Eric Richmond moves on August 4, 2017 via these papers for **RECUSAL OF THE JUDGE IN THE CASE**

Dated: Brooklyn, New York - August 4, 2017

By:



Eric Richmond
DEBTOR, PRO SE

To:

Glenn P. Warmuth, Esq. Stim & Warmuth, P.C.
2 Eighth Street Farmingdale, NY 11738

Michael Macco - Trustee
2950 Expy Dr S #109
Islandia, NY 11749

ROSEN, KANTROW & DILLON, PLLC
38 New Street
Huntington, New York 11743

Jordan S Katz, Esq.
40 Marcus Drive, Suite 200
Melville, New York 11747
(631) 454-8059